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Joint Research: Barriers Fall

WHEN Adm. Bobby R. Inman first considered heading up a risky new joint research venture involving many of the nation's top computer and electronics companies, his lawyers immediately said the business plan reeked with antitrust problems.

"I was urged not to do it; I was told legal hurdles could be overwhelming," Admiral Inman, the former Deputy Director of Central Intelligence, said recently. "Naturally, I was very concerned at the outset, but I decided to go ahead anyway."

A scant two and a half years later, worries about putting competing engineers in the same research laboratory seem almost laughable. Last month, the Justice Department said that it had no problems with Admiral Inman's 20-company Microelectronics and Computer Technology Corporation.

More importantly, the Reagan Administration has openly invited more of the same: In the technology war against Japan, even a consortium involving virtually every American player in an industry could well pass antitrust scrutiny, said J. Paul McGrath, who recently left the post of Assistant Attorney General in charge of the antitrust division.

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"The message was clear, and it can't help but foster more cooperative R&D," said Larry W. Sumney, president of the Semiconductor Research Corporation, a consortium of 40 electronics companies that supports university research. "If we decide to pursue other avenues of joint development that once looked doubtful, it will now be possible."

For decades, research and development consortiums raised the same sort of problems that have plagued mergers and joint ventures within an industry. Companies joining together to develop new technologies, critics charged, could reduce competition by coordinating the pace of innovation. At worst, they could become exclusive clubs, keeping all of their expensive technological gems within the family.

Defenders of such ventures have long argued that society is best served by the economic efficiencies of teamwork, but until recently the argument carried little weight. In a 1964 case involving a joint venture, the Supreme Court said that "possible economies cannot be used as a defense to illegality."

At the same time, joint research and development has always been afforded a somewhat privileged, if precarious, niche in the complex world of antitrust law.

Antitrust regulators have said that while cooperation among competitors is usually suspect, it may be necessary if no individual company is willing to invest heavily in a risky new idea — a view that became increasingly popular as Japanese manufacturers began eating into the American market. In Japan, the Government not only allowed companies to work together, it paid them to do so. Quickly, a rising chorus called for a change in American antitrust rules.

"Remember, the precedents here were all set when society believed that the U.S. held — forgive the pun — all of the industrial chips," said Phillip E. Areeda, a professor at Harvard Law School and an expert on antitrust law. "Obviously, the psychological background is different today."

In response to pressure by Admiral Inman and others, the Justice Department has raced to refine its "rule of reason" approach in evaluating research and development consortiums.

"We've essentially come to the conclusion that there are only two types of arrangements that are troublesome," Mr. McGrath explained recently. "One is where the attempt is to limit innovation in an industry. The second is where there is an effort to limit what smaller competitors can do."

In the computer industry, Mr. McGrath insisted, there are no such risks. Conspicuously absent from membership in Admiral Inman's M.C.C. venture is the biggest player of them all, the International Business Machines Corporation. Even if I.B.M. were to join M.C.C., a situation Mr. McGrath said he was "not prepared to evaluate," hungry Japanese and European manufacturers would keep the marketplace honest. (I.B.M., for the record, says it is still not interested in joining M.C.C., in part because the company would have to divulge some proprietary research data to its competitors.)

Even supporters of the Justice Department's approach, however, concede that it leaves several problems unresolved. "I think there is agreement that you don't need as many centers of R&D to foster technology competition as you need companies in an industry to foster price competition," Mr. Areeda said. "But what is the right number? I don't know if anyone has the answer to that."

Moreover, some critics say that the mere presence of competition is not enough. It has to be competition with muscle.

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A consortium of the biggest American players, some legal experts argue, would hold the power to set industry standards that leave nonparticipants out in the cold. In the computer industry, for example, a consortium of manufacturers could agree on a common computer language, set of protocols or configuration of hardware.

The result could be the exclusion of a foreign competitor. And any competing company, American or foreign, that wanted to make a quantum leap with radically new software technology, for example, would have to risk ignoring the de facto standard.

On the other hand, many manufacturers, especially in the computer field, choose their own set of standards just to be different — not better. The result is greater expense for users of many different types of equipment.

With most of the antitrust hurdles now toppled, it may be the unwillingness of competitors to join hands, not the unwillingness of the courts, that blocks further cooperation.

"R&D is tremendously expensive, and it is getting more expensive every year," Mr. Sumney said. "The question now isn't how much joint research is legal, it's how much the industry can afford."